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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL VITO CLARK,

Defendant and Appellant.

A142542

(Solano County  
Super. Ct. No. FCR302057)

Daniel Vito Clark was convicted of second degree burglary and eventually placed on postrelease community supervision (PRCS). On appeal, he challenges a denial of a motion to terminate his PRCS. He argues that termination was required under Penal Code section 3456, subdivision (a)(3)<sup>1</sup> because he was on PRCS “continuously for one year with no violations of his . . . conditions . . . that result[ed] in a custodial sanction.” Although he acknowledges he violated his PRCS conditions within the first year by failing to drug test and was sentenced to 72 days of time served in county jail as a result, he contends that this jail time was not a custodial sanction resulting from the violation because he was originally incarcerated for a different violation to which he never admitted. We affirm the trial court’s ruling.

I.

BACKGROUND

Clark was placed on PRCS on October 20, 2012. On September 11, 2013, he was arrested and jailed after the Solano County District Attorney’s Office petitioned to revoke

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<sup>1</sup> All further statutory references are to the Penal Code.

his PRCS on the ground that he had possessed methamphetamine in late July. Clark remained in custody for 36 days, until October 16, 2013. At that time, he admitted a PRCS violation, but instead of admitting to possession of methamphetamine he admitted to having failed to appear for a drug test.<sup>2</sup> In admitting the violation, he signed a waiver form stating, “Even though judgment may be imposed as a result of my admission . . . [¶] . . . [¶] I give up my right to appeal” and “understand the Court has the power to resentence me or impose sanctions. . . . The Court may reinstate my . . . postrelease supervision.” His PRCS was reinstated, and he was sentenced to 72 days of time served, comprised of 36 days in custody plus 36 days of credit.

In December 2013, Clark moved to terminate his PRCS (the “first motion to terminate PRCS”), arguing that the trial court “ha[d] the discretion to terminate [his] PRCS because he ha[d] not had a custodial sanction in the last six months” and alternatively that the court had authority to terminate his PRCS even if he had suffered a qualifying custodial sanction.<sup>3</sup> The court denied the motion in February 2014, and Clark did not appeal from that order.

In April 2014, Clark was arrested again, for resisting arrest and being “out of compliance with [his PRCS] terms and conditions.” Two months later, after signing another waiver form like the one he signed the previous October, he admitted to violating his PRCS conditions by failing to drug test and failing to obey all laws. In addition, he pleaded no contest to the charge of resisting arrest, and he received concurrent sentences of 180 days in jail with custody credits for 112 days. As part of his plea, he agreed to the reinstatement of PRCS after his discharge from custody, which allowed him to avoid being placed on summary probation for resisting arrest.

A month later, Clark again moved to terminate his PRCS (the “second motion to terminate PRCS”), this time on the basis that termination was mandatory under section

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<sup>2</sup> According to a memorandum from Clark’s probation officer, Clark failed to drug test on June 26, June 28, and August 16, 2013.

<sup>3</sup> The motion referred to nonexistent code sections, “[s]ection 3456(6)(b)(3)” and “[s]ection 3456(6)(b)(6)” respectively, but based on the substance of the arguments, we believe Clark meant to refer to section 3456, subdivisions (a)(2) and (a)(6).

3456, subdivision (a)(3) because between October 2012 and October 2013 he had been on PRCS without any violation resulting in a custodial sanction. The trial court denied the motion. This time, he appealed the court's ruling.

## II. DISCUSSION

Clark contends his second motion to terminate PRCS was improperly denied because he was entitled to be discharged from PRCS as of October 2013, when, according to him, a year had elapsed without any violation resulting in a custodial sanction. We are not persuaded.

“PRCS [] was established as an element of the Criminal Justice Realignment Act of 2011 . . . . [This Act] made significant changes to the sentencing and supervision of persons convicted of felony offenses and shifted responsibility for the custodial housing and postrelease supervision of certain felons from the state to the local jails and probation departments. [Citation.] Under section 3451, low-level offenders serving a prison term who are released from prison ‘shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to community supervision . . . .’ ” (*People v. Jones* (2014) 231 Cal.App.4th 1257, 1266.) An extensive series of conditions are statutorily mandated for persons on PRCS (§ 3453), and the trial court and probation department are authorized to “determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including . . . flash incarceration in a city or county jail.” (§ 3454, subd. (b).) If these sanctions are inadequate in a particular situation, the probation department may petition the court for penalties including “return” to PRCS and confinement in county jail. (§ 3455, subd. (a)(1)-(3).)

The duration of PRCS is limited to a maximum of three years. (§ 3455, subd. (e).) But PRCS may be terminated in the trial court's discretion after six months if there has been no violation (§ 3456, subd. (a)(2)), and PRCS “shall” be discharged if the person

goes for a period of “one year with no violations of his or her conditions . . . that result in a custodial sanction.” (*Id.*, subd. (a)(3).) It is this latter provision on which Clark relies.

Initially, we doubt that Clark’s claim is properly presented.<sup>4</sup> Clark never appealed from the denial of his first motion to terminate PRCS, which raised a similar issue involving whether he suffered a qualifying custodial sanction based on his failure to drug test in the summer of 2013. In addition, he agreed to the reinstatement of his PRCS in June 2014, further calling into question whether he preserved his right to argue that he should be discharged from PRCS *now* because he should have been discharged from PRCS in 2013. But even assuming Clark did not forfeit this claim, it fails on the merits.

Clark argues that the violation of his PRCS conditions to which he admitted, failing to drug test, did not “result in a custodial sanction” under section 3456, subdivision (a)(3) “because the Solano County Probation Department’s administrative regulations do not provide for any custodial term for a failure to drug . . . test.” In other words, his position is that because he was brought into custody for possession of methamphetamine, an offense that ultimately was not the basis for the finding that he violated his PRCS conditions, and because the regulations do not provide for incarceration for the violation which *was* found, failing to drug test, the violation did not “result in” the time he served in custody.

The issue is not, however, whether Clark’s actual *time in custody* can be characterized as resulting from his failure to drug test, but whether a *custodial sanction* resulted from that violation of his PRCS conditions. “[C]ourt-imposed . . . returns to custody” after a violation of PRCS conditions “are expressly described as a ‘custodial sanction’ in section 3455, subdivision (d).” (*People v. Superior Court (Ward)* (2014) 232 Cal.App.4th 345, 350; § 3455, subds. (a)(1), (d).) Here, the trial court imposed a sentence of 72 days of time served as a result of Clark’s admitted violation of his PRCS conditions by failing to drug test, which was unquestionably a “custodial sanction” under the statute. Even though the court imposed the sentence after Clark had actually served

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<sup>4</sup> We requested and received supplemental briefing on various procedural issues affecting whether we should reach the merits of the appeal.

time in custody, it constituted the court’s determination that 72 days in county jail was an appropriate sanction for his failure to drug test. And Clark offers no authority for the proposition that regulations addressing a local agency’s normal response to various types of violations trump a trial court’s statutory authority to impose “a period of incarceration in county jail” whenever it finds a “person has violated the conditions of [PRCS].” (§ 3455, subd. (a)(1).) We conclude that the 72 days in county jail he was ordered to serve was a custodial sanction resulting from his violation of his PRCS conditions by failing to drug test. As a result, section 3456, subdivision (a)(3) did not require termination of his PRCS because he was not on PRCS for a full year without a disqualifying violation.

III.  
DISPOSITION

The trial court’s order denying Clark’s second motion to terminate PRCS is affirmed.

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Humes, P.J.

We concur:

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Margulies, J.

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Dondero, J.